

1 MAGISTRATE JUDGE BRIAN A. TSUCHIDA
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

9 UNITED STATES OF AMERICA,)
10 Plaintiff,) Case No.: CR16-0154 JCC
11 vs.)
12 NICHOLAS HOGAN,) DEFENSE SUPPLEMENTAL MOTION
13 Defendant.) AND AFFIDAVIT FOR ORDER
14) MODIFYING CONDITIONS OF RELEASE
15)
16 COMES NOW the defendant, Nicholas Hogan, by and through his attorney, Wayne C.
17 Fricke, Hester Law Group, Inc., P.S., for an Order modifying the firearms prohibition in his
18 conditions of release.

This motion is based on the attached affidavit filed in support.

RESPECTFULLY SUBMITTED this 7 day of July, 2016.

HESTER LAW GROUP, INC., P.S.
Attorneys for Defendant

By: 
Wayne C. Fricke, WSB #16550

1 STATE OF WASHINGTON)
2 : ss.
County of Pierce)

3 WAYNE C. FRICKE being first duly sworn under oath deposes and says that I am the
4 attorney for Nicholas Hogan in the above-entitled matter.

5 The court granted Mr. Hogan's request that he be allowed to carry a firearm while
6 working as his employment as a police officer, subject to the approval of the United States
7 Attorney pursuant to section 925(c) of Title 18. This request was granted after the parties
8 referred the court to this provision and stated that it was applicable to Mr. Hogan's situation.

9 Subsequent to the court hearing, the government contacted counsel and indicated that
10 our interpretation of the statute omitted the exception contained within 18 USC Section
11 925(a)(1). That section makes an exception for law enforcement officers, which was
12 confirmed by the ATF regional counsel. Thus, based on a correct interpretation of the
13 governing provisions, it has been determined that under 18 USC Section 925(a)(1), an officer
14 is not precluded from possessing a service weapon to carry out his official duties. The statute
15 reads in pertinent part:

16 "The provisions of this chapter . . . shall not apply with respect to the . . . possession . . .
17 of any firearm or ammunition . . . issued for the use of, the United States or any
18 department or agency thereof or any State or any department, agency, or political
19 subdivision thereof."

20
21 This provision allows Nicholas Hogan to lawfully possess a firearm while on duty, but
22 does not allow him to possess a personal weapon; Nor does he need to follow 18 USC Section
23 925(c) in seeking a waiver.

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25 As Mr. Hogan is not legally precluded from possessing a firearm, the defendant would
26 request that the Court modify the firearms provision of his conditions of release to read as
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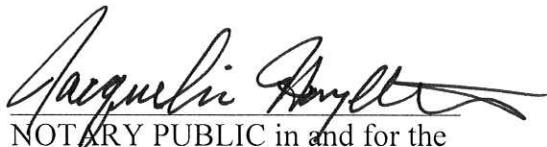
1 follows: "You are prohibited from possessing or having access to firearms or dangerous
2 weapons except for possession of a service firearm provided by the City of Snoqualmie or any
3 other law enforcement agency to be used while on duty as a law enforcement officer only."

4 FURTHER YOUR AFFIANT SAYETH NAUGHT.
5

6 
7 Wayne C. Fricke, WSB #16550

8 SUBSCRIBED AND SWORN to before me this 7th day of July,
9 2016.




10 NOTARY PUBLIC in and for the
11 State of Washington. Residing at
12 Tacoma. My Commission Tacoma
13 Expires: 3/4/2020.

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2 CERTIFICATE OF SERVICE
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4 I hereby certify that on July 7th, 2016, I electronically filed the foregoing
5 Supplemental Defense Motion and Affidavit for Order Modifying Conditions of Release with the
6 Clerk of the Court using the CM/ECF system which will send notification of such filing to the
7 following:

8 Bruce F. Miyake
9 Assistant United States Attorney
10 700 Stewart Street, Suite 5220
11 Seattle, WA 98101-1271

12 Rose E. Gibson
13 Trial Attorney / Criminal Section / Civil Rights Division
14 950 Pennsylvania Avenue NW
15 Washington, DC 20530

16 I hereby certify that on July 7th, 2016, I mailed Supplemental Defense Motion and
17 Affidavit for Order Modifying Conditions of Release to the following:

18 Nick Hogan
19 13805 172nd Pl East
20 South Hill, WA 98374

21 DATED this 7th day of July, 2016.

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Sarah H. Leighton